

1 **BEFORE THE INSURANCE COMMISSIONER**  
2 **OF THE STATE OF CALIFORNIA**  
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4 In the Matter of the Licenses and Licensing  
5 Rights of:

6 MIGUEL ANGEL MORAN,  
7 Respondent.  
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Case No. LBB 3259-AP

OAH No. L2007020659

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**DECISION AND ORDER**

11 This matter came on regularly for hearing before Carolyn D. Magnuson, Administrative  
12 Law Judge with the Office of Administrative Hearings, in Los Angeles, California, on March 21,  
13 2007. Elaine A. LaFrance, Senior Staff Counsel, represented the Commissioner and the  
14 Department of Insurance. Respondent appeared in person and represented himself.

15 Oral and Documentary evidence was received, and the matter was submitted for decision  
16 at the close of the hearing.

17 The Administrative Law Judge submitted her proposed decision dated April 2, 2007 and  
18 recommended it be adopted as the decision of the Insurance Commissioner. The Commissioner  
19 considered but did not adopt the proposed decision and advised Respondent of his rejection of the  
20 proposed decision by notice dated April 19, 2007. The Respondent agreed to have the Insurance  
21 Commissioner decide the matter upon the record.

22 NOW, THEREFORE, having considered the record, including the evidence introduced in  
23 this matter, the Insurance Commissioner hereby makes the following Factual Findings, Legal  
24 Conclusions, Determination of Issues and Order.  
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## FACTUAL FINDINGS

1. John Garamendi (Complainant or Commissioner) made the Accusation in his official capacity as the Insurance Commissioner, Department of Insurance (Department), State of California.

2. Steve Poizner (Complainant or Commissioner) made the First Amended Accusation in his official capacity as the Insurance Commissioner, Department of Insurance (Department), State of California.

3. Miguel Angel Moran (Respondent) now is, and since March 10, 2006 has been, licensed by the Commissioner to act as a resident fire and casualty broker-agent in the State of California. Respondent was also licensed from January 5, 2000 to January 31, 2002 and again from April 26, 2002 to January 31, 2006.

4. In March 2006, Respondent submitted a license renewal application to the Department. In response to question number two on the application, which asked "have you been convicted of a crime since your last previous application or renewal?", Respondent checked the "Yes" box.

5. On December 1, 2004, in the Superior Court of the State of California, County of Los Angeles, San Fernando Courthouse Judicial District, Respondent was convicted, on his plea of nolo contendere, of violating Penal Code section 242 (battery), a misdemeanor. Imposition of sentence was suspended and Respondent was placed on summary probation for 36 months on the condition, inter alia, that he serve 60 days in county jail or perform 42 days of CalTrans service, pay fines and assessments, make restitution to the victim, and refrain from owning or possessing any firearms or ammunition for a period of 10 years. It is not known whether Respondent is presently in compliance with the terms and conditions of his probation.

6. The facts and circumstances underlying Respondent's conviction, as set forth in the police report, are that, shortly after midnight on July 5, 2005, Respondent and his wife and other family members went to a convenience store to purchase food and beer. The store clerk took exception to the manner in which Respondent placed his merchandise on the counter. The clerk came around the counter toward Respondent. Heated words were exchanged. In an attempt to

1 defuse the situation, Respondent's wife placed herself between the two men. As the clerk  
2 attempted to strike Respondent, he hit the woman in the head, enraging Respondent and  
3 Respondent's brother-in-law, who both attacked the clerk, hitting and kicking him. Ultimately,  
4 Respondent's brother-in-law hit the clerk over the head with a beer bottle, causing him to lose  
5 consciousness and requiring him to go to the hospital for treatment.

6 7. When Respondent filed his Notice of Defense to the original Accusation, he gave as  
7 his mailing address 12924 Newton Street, Sylmar, CA 91342, and he gave as his telephone  
8 number 818-675-3512. Subsequently, Department representatives were unable to reach  
9 Respondent using that phone number. When Respondent filed his Notice of Defense to the First  
10 Amended Accusation, he reported the same address but gave a new phone number, 818-640-  
11 0269.

12 8. Because Respondent chose not to testify and counsel for Complainant chose not to call  
13 Respondent as a witness, there was no evidence of extenuation, mitigation, or rehabilitation  
14 admitted.

### 15 LEGAL CONCLUSIONS

16 1. Insurance Code section 1668, subdivision (b), provides that a license should not be  
17 issued or retained if to do so would be against the public interest. The phrase "public interest"  
18 implicates "[s]omething in which the public, the community at large, has some pecuniary interest,  
19 or some interest by which their legal rights or liabilities are affected." (*Black's Law Dictionary*  
20 (4<sup>th</sup> ed. 1951).)

21 2. Complainant alleges that it would be against the public interest to permit Respondent to  
22 continue transacting insurance business in California. The basis for this claim is twofold:  
23 Respondent's failure to keep the Department advised of changes in his background information  
24 and Respondent's criminal conviction and its underlying circumstances.

25 3. In support of the initial allegation, the Commissioner cited Insurance Code section  
26 1729, which provides: "Every licensee and every applicant for a license shall immediately notify  
27 the commissioner in writing of any change in his address as given to the commissioner pursuant  
28 to Sections 1658 and 1728." The evidence established that Respondent had changed his

1 telephone number without notifying the Commissioner but failed to establish that Respondent had  
2 changed his address without notifying him.<sup>1</sup> Therefore, there is no basis to discipline  
3 Respondent's license based on his violation of Insurance Code section 1729.

4 4. The remaining issue, then, is whether Respondent's conviction and/or the conduct  
5 involved therein are of such character that it would be against the public interest to allow  
6 Respondent to retain his license. Because Respondent chose not to testify, there is no evidence of  
7 mitigation or rehabilitation.

8 5. The facts underlying Respondent's battery conviction are contained in the police report  
9 admitted into evidence at the administrative hearing (Exhibit 4). The police report was authored  
10 by Officer Fins. Most of the police report consisted of Officer Fins' recitation of third party  
11 accounts (that of Officer Alferez) of what had happened. While Respondent's statements to  
12 Officer Alferez were admissions and, as such, qualified as a hearsay exception, Officer Alferez's  
13 repetition of Respondent's statements to Officer Fins constitutes hearsay evidence which, under  
14 Government Code Section 11513(d) "may be used for the purpose of supplementing or explaining  
15 other evidence..." In this case, then, the hearsay evidence contained in the police report may be  
16 used to supplement or explain the battery conviction, evidence of that conviction being admitted  
17 into direct evidence as Exhibit 3.

18 6. The State of California has a legitimate interest in licensing insurance agents. As  
19 articulated in the California Insurance Code, the purpose of insurance licensing is to protect the  
20 public by requiring and maintaining professional standards of conduct on the part of all persons  
21 licensed hereunder. (Section 1737.) Disciplinary proceedings against licensees are not designed  
22 to punish the licensee but rather to protect the public and maintain the integrity of the insurance  
23 profession. *Ready v. Grady* (1966) 243 Cal.App.2d 113, 116-117, 52 Cal.Rptr. 303. Indeed, the  
24 relevant provisions of the Insurance Code are designed to insure that the privileges granted under  
25 the license are not exercised in derogation of the public interest and to keep the regulated activity  
26 clean and wholesome. *Goldberg v. Barger* (1974) 112 Cal.Rptr. 827, 37 Cal.App.3d 997. In this  
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28 <sup>1</sup> If there is a similar notification requirement for applicants and licensees regarding changes in telephone numbers,  
Complainant provided no reference to that authority.

1 case, Respondent's misdemeanor conviction, for which he is still on probation, warrants  
2 discipline under Insurance Code Sections 1668(b) and 1738 as his conduct evidences a potential  
3 for a violent interaction with a member of the public which is against the public interest and is  
4 substantially related to the qualifications, functions and duties of an insurance licensee.  
5 Respondent's conviction compels discipline in order to assure that the public is safeguarded from  
6 harm.

### 7 **DETERMINATION OF ISSUES**

8 Pursuant to the foregoing factual findings, the Insurance Commissioner makes the  
9 following determination of issues:

10 1. California Insurance Code Section 1738 provides, in relevant part, "The commissioner  
11 may suspend or revoke any permanent license issued pursuant to this chapter on any grounds set  
12 forth in Article 6 hereof on which he may deny an application. Whenever in such grounds the  
13 word 'applicant' is used, such word shall for the application of this section be the words 'the  
14 holder of a permanent license.' A suspension or revocation... of any permanent license, except a  
15 restricted license, on a ground other than that set forth in Section 1669 shall be after notice and  
16 hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government  
17 Code, and the commissioner has all of the powers granted therein."

18 2. Section 1742 also provides in relevant part, "Where a person who is or has been  
19 licensed under this chapter has been found by the commissioner to have violated any provision of  
20 this code which would justify the suspension or revocation of a license held... the commissioner  
21 may, after hearing, revoke the license held... for an unrestricted license, and in lieu thereof issue  
22 to such person a restricted license. The commissioner may impose any reasonable conditions  
23 upon the acquisition of such restricted license or the conduct of the holder thereof. The holder of  
24 the restricted license has no property right therein and the commissioner may, with or without  
25 either hearing or cause, suspend or revoke a restricted license."

26 3. By reason of the matters set forth in Factual Findings 5 and 6, cause was established for  
27 disciplinary action against Respondent's licenses and licensing rights pursuant to California  
28 Insurance Code sections 1668(b) and 1738, as it would be against the public interest to permit

Respondent to continue transacting insurance with an unrestricted license in California. Insurance licensees often come into close contact with members of the public, and not all such situations are necessarily harmonious ones. Respondent's conviction for acts of violence against a member of the public establishes the potential for a violent interaction between Respondent and members of the public who choose to avail themselves of insurance products and services. Therefore, it would be against the public interest to subject insurance consumers to such a potential without restricting Respondent's license in some fashion as set forth below in the following Order:

### **ORDER**

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The unrestricted license and licensing rights of Respondent MIGUEL ANGEL MORAN are hereby REVOKED for the causes determined in the Legal Conclusions set forth above. However, a restricted license to act in the capacity of fire and casualty broker-agent shall be issued to Respondent pursuant to California Insurance Code Section 1742 to act in the capacity of fire and casualty broker-agent. Said restricted license shall be issued subject to the following conditions and restrictions:

1. Respondent shall obey all laws and regulations of the State of California, the United States of America, and every state and foreign government (and political subdivision thereof) having jurisdiction over Respondent.

2. Said restricted license shall remain subject to the conditions and restrictions set forth herein until such time as the Insurance Commissioner shall, by written order, remove or modify such conditions and restrictions; and each of said conditions and restrictions shall apply to said license and any renewal thereof, whether or not actually endorsed on the license;

3. Pursuant to California Insurance Code Section 1742, the holder of a restricted license has no property right therein and the Insurance Commissioner may, with or without a hearing or cause, suspend or revoke a restricted license.

4. While subject to this restricted license, Respondent shall inform his current employer (and all subsequent employers) of this Order and the terms and conditions of his restricted license by providing them a copy of this Decision.

5. Two years after the date of the Commissioner's Order issuing the restricted license, Respondent may make a written request to the Commissioner for removal of the restrictions.

This Decision shall be effective thirty (30) days from the date of this order.

Dated: STEVE POIZNER  
Insurance Commissioner

By \_\_\_\_\_

SUSAN J. STAPP  
Deputy Chief Counsel

In accordance with Government Code section 11521, the following notice is provided to you concerning reconsideration of this Decision. You may file a petition for the reconsideration of this Decision. However, the power to order reconsideration expires 30 days after the delivery or mailing of a decision to a Respondent, or on the date set by the Department as the effective date of the decision if that date occurs prior to the expiration of the 30-day period.

Petitions for reconsideration should be directed to:  
Susan J. Stapp  
Deputy Chief Counsel  
California Department of Insurance  
45 Fremont Street  
San Francisco, CA 94105

The Department of Insurance may, but is not required to grant a stay not to exceed 30 days for the purpose of filing a petition for reconsideration. Any request for a stay must be filed within the applicable time period set forth above.

1           If additional time is needed to evaluate a timely petition for reconsideration, the  
2 Department may grant a stay of the expiration, for no more than 10 days and solely for the  
3 purposed of considering the petition.  
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5           If no action is taken on a petition within the time allowed for ordering reconsideration, the  
6 petition shall be deemed denied.  
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